

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>KENNETH E. LOWE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 206,476
<b>PMI FOOD EQUIPMENT GROUP</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from the Award dated August 17, 1998, entered by Administrative Law Judge Julie A. N. Sample. The Appeals Board heard oral argument on March 16, 1999.

**APPEARANCES**

James E. Martin of Overland Park, Kansas, appeared for the claimant. Clifford Stubbs of Lenexa, Kansas, appeared for the respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are set forth in the Award. The transcript of the October 23, 1997 deposition of Bonnie Kuhn and the exhibits offered during that deposition were listed in the ALJ's recitation of the record but were not considered by the ALJ, citing K.S.A. 44-519. The Appeals Board will not consider Ms. Kuhn's testimony given at the October 23, 1997 deposition as to what the medical records say, but the Appeals Board will consider as part of the record for this review the medical treatment records which were offered as exhibits to that deposition of the records custodian.

**ISSUES**

In his Request for Review, claimant described the issue as:

"1. Whether the claimant is entitled to permanent partial disability for the agreed upon 11% permanent partial impairment of the whole person."

The ALJ limited claimant's award to benefits for medical treatment, finding he was not entitled to benefits for permanent partial disability pursuant to K.S.A. 44-501(c). Whether claimant satisfied the requirements of K.S.A. 44-501(c) is the only issue for review.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant testified that on October 25, 1995 he was tilting a 500-700 pound refrigerator/freezer unit to slide a roll-away track under it when the unit fell over on him, injuring his left leg, back and left shoulder. He was sent that same day for medical treatment at Occupational Medicine Associates. He was off work the remainder of that day. Claimant was given written instructions by the physician at Occupational Medicine Associates which claimant presented to the respondent the next day. It is disputed whether those instructions stated that claimant was to do no work or whether they were intended to allow claimant to return to light duty work. In either case, it is not disputed that the physician's instructions restricted claimant to 20 pounds lifting, 20 pounds pushing or pulling, and no repetitive bending. These restrictions were to be in effect until claimant returned for follow-up. Claimant was next seen at Occupational Medicine Associates on October 31, 1995. Counting the day of accident and the day of his follow-up appointment, claimant was unable to return to his regular job duties for at least seven days.

We do not know for certain whether claimant would have been able to perform accommodated work because when claimant returned to work on October 26, 1995 with the physician's instructions, he was terminated. The record does not disclose that claimant's termination was due to his injury. Respondent's human resource supervisor, Edward J. Martin, testified that it had a policy of accommodating light duty restrictions. This contention is not credible given Mr. Martin's inability to substantiate this policy or explain how it would have accommodated claimant's restrictions. Furthermore, there was evidence that claimant's restrictions from a prior injury had not been accommodated and he was not returned to work until given a full release. But whether claimant's temporary restrictions would have been accommodated had he not been terminated does not matter because the Appeals Board has previously held that the issuance of restrictions which prevent an injured worker from returning to the job he or she was doing at the time of the injury, satisfy the provisions of the statute. See, e.g., Fuentes v. IBP, Inc., Docket No. 196,242 (October 1998).

At the time of claimant's injury, K.S.A. 44-501(c) provided in pertinent part:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the

employee for a period of at least one week from earning full wages **at the work at which the employee is employed.** (Emphasis added.)

In Boucher v. Peerless Products, Inc., 21 Kan. 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996), the court found K.S.A. 44-501(c) to be plain and unambiguous that compensation to an injured employee is limited to medical expenses if the employee is not disabled for at least one week from earning full wages at the work for which he or she is employed.

After claimant's injuries, K.S.A. 44-501(c) was amended to delete the above-quoted section. K.S.A. 1996 Supp. 44-501(c). This amendment provided that it was to be applied to injuries that occurred prior to April 4, 1996, the effective date of the amendment, unless the claim had been fully adjudicated. K.S.A. 1996 Supp. 44-501a.

In Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. \_\_\_\_ (1997), a case involving the retroactive application of the amended section of 44-501(c), the Court of Appeals held, *inter alia*: "In workers compensation cases, the law in effect at the time of the injury governs the rights and obligations of the parties." 23 Kan. App. 2d 868, Syl. ¶ 8. Thus, the 1996 amendment to K.S.A. 44-501(c) had prospective application only and did not apply to this claimant's claim for compensation.

The Appeals Board concludes that claimant was disabled for more than one week from the work he was doing at the time of his accident because even if he would have been placed in an accommodated job due to restrictions from the accidental injury, he was disabled from the work he was doing when he was injured. Also, claimant did not receive full wages for the time he missed work while seeking medical treatment. Missing work for medical treatment related to the accident is equivalent to being disabled from earning wages. Therefore, claimant is entitled to an award of permanent partial disability compensation based upon the agreed upon 11 percent impairment to the body as a whole as a result of the accidental injury at issue.

Claimant's request for temporary total disability compensation is denied because claimant has failed to prove he was unable to engage in substantial and gainful employment for more than one week. K.S.A. 44-510c(b)(1).

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample dated August 17, 1998, should be, and is hereby, modified and an award for compensation is entered as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Kenneth E. Lowe, and against the respondent, PMI Food Equipment Group, and its insurance carrier,

Travelers Insurance Company, for an accidental injury which occurred October 25, 1995, and based upon 45.65 weeks at the maximum rate of \$326 per week for an 11% permanent partial general disability, making a total award of \$14,881.90 all of which is currently due and owing and is ordered paid in one lump sum less any amounts previously paid.

Respondent and its insurance carrier are ordered to pay all reasonable and related medical expenses.

Future medical is awarded upon proper application to and approval by the Director.

An unauthorized medical allowance of up to \$500 is awarded upon presentation to respondent of an itemized statement verifying same.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Metropolitan Court Reporters, Inc.	\$322.20
Rebecca J. Ramsay	109.40
Hostetler & Associates, Inc.	115.10

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James E. Martin, Overland Park, KS  
Gregory D. Worth, Lenexa, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director